

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

LOWELL N. PAYNE, JR.,

Plaintiff,

vs.

Case No.: 2:13-cv-1172

JUDGE SMITH

Magistrate Judge Abel

CATHY PUMMILL, *et al.*,

Defendants.

ORDER

On November 22, 2013, the United States Magistrate Judge issued a *Report and Recommendation* recommending that Plaintiffs' Complaint be dismissed for failure to state a claim under 42 U.S.C. § 1983. It was further recommended that Plaintiff Payne's Motion for Certification of a Class Action be **DENIED** because pro se prisoners are not qualified to adequately represent a class. (*See Report and Recommendation*, Doc. 5). The parties were advised of their right to object to the *Report and Recommendation*. This matter is now before the Court on Plaintiff Payne's Objections to the *Report and Recommendation*. (*See* Doc. 8). The Court will consider the matter *de novo*. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

The objections present the same issues presented to and considered by the Magistrate Judge in the *Report and Recommendation*. Plaintiff objects to the Magistrate Judge's characterization of him and his fellow inmates as prisoners. He asserts they are "detainee's being held unlawfully at the Chillicothe Correctional Institution." (Doc. 8 at 1). However, as the Magistrate Judge thoroughly discussed in the *Report and Recommendation*, "a complaint must

contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ *Twombly*, 550 U.S. at 570.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). Plaintiff, whether identified as a prison or detainee has failed to sufficiently state a claim for relief. For the reasons stated in the *Report and Recommendation*, this Court finds that Plaintiff’s objections are without merit and are hereby **OVERRULED**.

The *Report and Recommendation*, Document 5, is **ADOPTED** and **AFFIRMED**. Plaintiffs’ Complaint is hereby dismissed in its entirety. Further, Plaintiff’s other pending motions for certification, default judgment, summary judgment and reconsideration are **DENIED AS MOOT**.

The Clerk shall remove Documents 2, 3, 5, 14 AND 15 from the Court’s pending motions list. The Clerk shall terminate this case.

IT IS SO ORDERED.

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT